

AMENDED IN SENATE JUNE 25, 2009

AMENDED IN ASSEMBLY JUNE 1, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 846**

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**Introduced by Assembly Member Torrico**

February 26, 2009

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An act to add Sections 25196.5 and 42402.6 to the Health and Safety Code, to add Section 6437 to the Labor Code, and to add Section 13363 to the Water Code, relating to civil and administrative penalties.

### LEGISLATIVE COUNSEL'S DIGEST

AB 846, as amended, Torrico. State agencies: civil and administrative penalties.

The Administrative Procedure Act contains provisions governing the conduct of administrative adjudication for state agencies.

This bill would require the Department of Toxic Substances Control, the State Air Resources Board, the Department of Industrial Relations, and the State Water Resources Control Board to adjust the maximum and minimum amounts of specified civil and administrative penalties to take into account inflation on an annual basis using the Consumer Price Index, as provided. The bill would require, if a penalty below these maximum levels is sought, that the penalty be assessed, at a minimum, at a level that recovers economic benefits derived by the violator, except as specified. Because local air districts and unified program agencies would be subject to this requirement, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. This act shall be known, and may be cited, as the  
2 California Civil Penalties Inflation Supplement and Enforcement  
3 Act of 2009.

4 SEC. 2. Section 25196.5 is added to the Health and Safety  
5 Code, to read:

6 25196.5. (a) (1) The department shall adjust on an annual  
7 basis all civil and administrative penalties imposed pursuant to  
8 this chapter to adjust the maximum and minimum amounts  
9 specified in this chapter to take into account inflation using the  
10 Consumer Price Index for the month of June of the year prior to  
11 the adjustment as compared with June of the calendar year in which  
12 ~~the amount of the penalty was last established by legislation.~~  
13 *legislation was last enacted establishing or amending the amount*  
14 *of the penalty.*

15 (2) The amount of any penalties determined pursuant to this  
16 subdivision shall be rounded as follows:

17 (A) To the nearest multiple of ten dollars (\$10) in the case of a  
18 penalty less than or equal to one hundred dollars (\$100).

19 (B) To the nearest multiple of one hundred dollars (\$100) in the  
20 case of a penalty greater than one hundred dollars (\$100) but less  
21 than or equal to one thousand dollars (\$1,000).

22 (C) To the nearest multiple of one thousand dollars (\$1,000) in  
23 the case of a penalty greater than one thousand dollars (\$1,000)  
24 but less than or equal to ten thousand dollars (\$10,000).

25 (D) To the nearest multiple of five thousand dollars (\$5,000) in  
26 the case of a penalty greater than ten thousand dollars (\$10,000)  
27 but less than or equal to one hundred thousand dollars (\$100,000).

1 (E) To the nearest multiple of ten thousand dollars (\$10,000)  
2 in the case of a penalty greater than one hundred thousand dollars  
3 (\$100,000) but less than or equal to two hundred thousand dollars  
4 (\$200,000).

5 (F) To the nearest multiple of twenty-five thousand dollars  
6 (\$25,000) in the case of a penalty greater than two hundred  
7 thousand dollars (\$200,000).

8 *(3) Inflation adjustments made pursuant to this subdivision shall*  
9 *be adopted as emergency regulations pursuant to Chapter 3.5*  
10 *(commencing with Section 11340) of Part 1 of Division 3 of Title*  
11 *2 of the Government Code. Notwithstanding subdivision (b) of*  
12 *Section 11349.6 of the Government Code, the Office of*  
13 *Administrative Law shall not disapprove an emergency regulation*  
14 *adopted pursuant to this subdivision solely because it determines*  
15 *that the situation addressed by the regulation is not an emergency.*

16 (b) If the department or a unified program agency seeks to  
17 impose a penalty below the maximum levels set pursuant to this  
18 chapter, as adjusted by subdivision (a), the department or unified  
19 program agency shall calculate, and make express findings  
20 concerning, the economic benefits, if any, derived by the violator  
21 from the acts that constitute the violation. At a minimum, liability  
22 shall be assessed at a level that recovers those economic benefits,  
23 unless the department or unified program agency makes express  
24 findings that document that good faith efforts to comply or inability  
25 to pay justify a reduction and that the liability assessed will  
26 maintain the deterrent effect of the penalty.

27 (c) The department shall report to the Legislature on the  
28 implementation of this section.

29 SEC. 3. Section 42402.6 is added to the Health and Safety  
30 Code, to read:

31 42402.6. (a) (1) The state board shall adjust on an annual  
32 basis all civil and administrative penalties imposed pursuant to  
33 this division to adjust the maximum and minimum amounts  
34 specified in this division to take into account inflation using the  
35 Consumer Price Index for the month of June of the year prior to  
36 the adjustment as compared with June of the calendar year in which  
37 ~~the amount of the penalty was last established by legislation.~~  
38 *legislation was last enacted establishing or amending the amount*  
39 *of the penalty.*

(2) The amount of any penalties determined pursuant to this subdivision shall be rounded as follows:

(A) To the nearest multiple of ten dollars (\$10) in the case of a penalty less than or equal to one hundred dollars (\$100).

(B) To the nearest multiple of one hundred dollars (\$100) in the case of a penalty greater than one hundred dollars (\$100) but less than or equal to one thousand dollars (\$1,000).

(C) To the nearest multiple of one thousand dollars (\$1,000) in the case of a penalty greater than one thousand dollars (\$1,000) but less than or equal to ten thousand dollars (\$10,000).

(D) To the nearest multiple of five thousand dollars (\$5,000) in the case of a penalty greater than ten thousand dollars (\$10,000) but less than or equal to one hundred thousand dollars (\$100,000).

(E) To the nearest multiple of ten thousand dollars (\$10,000) in the case of a penalty greater than one hundred thousand dollars (\$100,000) but less than or equal to two hundred thousand dollars (\$200,000).

(F) To the nearest multiple of twenty-five thousand dollars (\$25,000) in the case of a penalty greater than two hundred thousand dollars (\$200,000).

(3) *Inflation adjustments made pursuant to this subdivision shall be adopted as emergency regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. Notwithstanding subdivision (b) of Section 11349.6 of the Government Code, the Office of Administrative Law shall not disapprove an emergency regulation adopted pursuant to this subdivision solely because it determines that the situation addressed by the regulation is not an emergency.*

(b) If the state board or a district seeks to impose a penalty below the maximum levels set pursuant to this division, as adjusted by subdivision (a), the state board or district shall calculate, and make express findings concerning, the economic benefits, if any, derived by the violator from the acts that constitute the violation. At a minimum, liability shall be assessed at a level that recovers those economic benefits, unless the state board or district makes express findings that document that good faith efforts to comply or inability to pay justify a reduction and that the liability assessed will maintain the deterrent effect of the penalty.

(c) The state board shall report to the Legislature on the implementation of this section.

SEC. 4. Section 6437 is added to the Labor Code, to read:

6437. (a) (1) The department shall adjust on an annual basis all civil and administrative penalties imposed pursuant to this part to adjust the maximum and minimum amounts specified in this part to take into account inflation using the Consumer Price Index for the month of June of the year prior to the adjustment as compared with June of the calendar year in which ~~the amount of the penalty was last established by legislation.~~ *legislation was last enacted establishing or amending the amount of the penalty.*

(2) The amount of any penalties determined pursuant to this subdivision shall be rounded as follows:

(A) To the nearest multiple of ten dollars (\$10) in the case of a penalty less than or equal to one hundred dollars (\$100).

(B) To the nearest multiple of one hundred dollars (\$100) in the case of a penalty greater than one hundred dollars (\$100) but less than or equal to one thousand dollars (\$1,000).

(C) To the nearest multiple of one thousand dollars (\$1,000) in the case of a penalty greater than one thousand dollars (\$1,000) but less than or equal to ten thousand dollars (\$10,000).

(D) To the nearest multiple of five thousand dollars (\$5,000) in the case of a penalty greater than ten thousand dollars (\$10,000) but less than or equal to one hundred thousand dollars (\$100,000).

(E) To the nearest multiple of ten thousand dollars (\$10,000) in the case of a penalty greater than one hundred thousand dollars (\$100,000) but less than or equal to two hundred thousand dollars (\$200,000).

(F) To the nearest multiple of twenty-five thousand dollars (\$25,000) in the case of a penalty greater than two hundred thousand dollars (\$200,000).

(3) *Inflation adjustments made pursuant to this subdivision shall be adopted as emergency regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. Notwithstanding subdivision (b) of Section 11349.6 of the Government Code, the Office of Administrative Law shall not disapprove an emergency regulation adopted pursuant to this subdivision solely because it determines that the situation addressed by the regulation is not an emergency.*

(b) If the division seeks to impose a penalty below the maximum levels set pursuant to this part, as adjusted by subdivision (a), the division shall calculate, and make express findings concerning,

1 the economic benefits, if any, derived by the violator from the acts  
2 that constitute the violation. Notwithstanding any other provision  
3 of law, at a minimum, liability shall be assessed at a level that  
4 recovers those economic benefits, unless the division makes  
5 express findings that document that good faith efforts to comply  
6 or inability to pay justify a reduction and that the liability assessed  
7 will maintain the deterrent effect of the penalty.

8 (c) The department shall report to the Legislature on the  
9 implementation of this section.

10 SEC. 5. Section 13363 is added to the Water Code, to read:

11 13363. (a) (1) The state board shall adjust on an annual basis  
12 all civil and administrative penalties imposed pursuant to this  
13 division *or pursuant to Section 25270.12, 25299, or 25299.76 of*  
14 *the Health and Safety Code* to adjust the maximum and minimum  
15 amounts specified in ~~this division~~ *those provisions* to take into  
16 account inflation using the Consumer Price Index for the month  
17 of June of the year prior to the adjustment as compared with June  
18 of the calendar year in which ~~the amount of the penalty was last~~  
19 ~~established by legislation.~~ *legislation was last enacted establishing*  
20 *or amending the amount of the penalty.*

21 (2) The amount of any penalties determined pursuant to this  
22 subdivision shall be rounded as follows:

23 (A) To the nearest multiple of ten dollars (\$10) in the case of a  
24 penalty less than or equal to one hundred dollars (\$100).

25 (B) To the nearest multiple of one hundred dollars (\$100) in the  
26 case of a penalty greater than one hundred dollars (\$100) but less  
27 than or equal to one thousand dollars (\$1,000).

28 (C) To the nearest multiple of one thousand dollars (\$1,000) in  
29 the case of a penalty greater than one thousand dollars (\$1,000)  
30 but less than or equal to ten thousand dollars (\$10,000).

31 (D) To the nearest multiple of five thousand dollars (\$5,000) in  
32 the case of a penalty greater than ten thousand dollars (\$10,000)  
33 but less than or equal to one hundred thousand dollars (\$100,000).

34 (E) To the nearest multiple of ten thousand dollars (\$10,000)  
35 in the case of a penalty greater than one hundred thousand dollars  
36 (\$100,000) but less than or equal to two hundred thousand dollars  
37 (\$200,000).

38 (F) To the nearest multiple of twenty-five thousand dollars  
39 (\$25,000) in the case of a penalty greater than two hundred  
40 thousand dollars (\$200,000).

(3) *Inflation adjustments made pursuant to this subdivision shall be adopted as emergency regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. Notwithstanding subdivision (b) of Section 11349.6 of the Government Code, the Office of Administrative Law shall not disapprove an emergency regulation adopted pursuant to this subdivision solely because it determines that the situation addressed by the regulation is not an emergency.*

(b) ~~If the state board or a regional board, a regional board, or a unified program agency seeks to impose a penalty below the maximum levels set pursuant to this division or pursuant to Section 25270.12, 25299, or 25299.76 of the Health and Safety Code, as adjusted by subdivision (a), the state board or regional board, a regional board, or a unified program agency shall calculate, and make express findings concerning, the economic benefits, if any, derived by the violator from the acts that constitute the violation. At a minimum, liability shall be assessed at a level that recovers those economic benefits, unless the state board or regional board, a regional board, or a unified program agency makes express findings that document that good faith efforts to comply or inability to pay justify a reduction and that the liability assessed will maintain the deterrent effect of the penalty. This subdivision does not affect the requirement to recover economic benefits from a violator, imposed pursuant to subdivision (e) of Section 13385.~~

(c) ~~Except as provided in subdivision (k) of Section 13350 and paragraph (2) of subdivision (n) of Section 13385, and in Sections 25270.12, 25299, and 25299.50 of the Health and Safety Code, proceeds from the implementation of subdivision (a) resulting from the increased amount of a civil penalty shall be deposited in a separate account, the Clean Water Civil Penalty Inflation Account, which is hereby created in the General Fund, to be expended, upon appropriation by the Legislature, consistent with Section 13441. "Proceeds" as used in this subdivision means the amount of the penalty imposed and collected that is above the amount that was authorized before the maximum penalty was first adjusted pursuant to subdivision (a).~~

(d) The state board shall report to the Legislature on the implementation of this section.

SEC. 6. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to

- 1 local agencies and school districts for those costs shall be made
- 2 pursuant to Part 7 (commencing with Section 17500) of Division
- 3 4 of Title 2 of the Government Code.

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